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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/668,953

09/23/2003

John McIntyre

JM-1-gw

3317

7590

04/24/2006

Michael I. Kroll  
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Syosset, NY 11791

EXAMINER

PHILOGENE, PEDRO

ART UNIT

PAPER NUMBER

3733

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/668,953	<b>Applicant(s)</b> MCINTYRE, JOHN	
	<b>Examiner</b> Pedro Philogene	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/23/03</u> . | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huebner (6,162,224) in view of Vanderslik (4,976,712).

With respect to claim 1, Huebner discloses an end cap (210,350) for the exposed ends of the pins and rod of an external fixator device, in combination comprising a fixator device (10) for forming an exoskeletal brace for use on a limb of a patient, the fixator device having a plurality of fixator pins (180) and at least one connecting rod (90), the fixation pins and the connecting rod being joined by a plurality of connecting clamps (60), the fixation pins having first and second opposing ends, the connecting rod having first and second opposing ends; an end cap (210) being disposed on the ends of the fixation pins; wherein the end cap is oval shaped having first and second opposing ends and a first and second opposing side surface, the first side surface being generally disposed away from the fixation pins and the second side surface being generally disposed toward the fixation pins, the second side surface having a cavity (365) therein; and pliable material disposed in the cavity, wherein the end of the fixation pins is disposed into the pliable material to permit the ends of the fixation pins to be covered.

It is noted that Huebner did not teach of a fixation pins embedded into the pliable material; as claimed by applicant. However, in a similar art, Vanderslik evidences the

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use of pins embedded in the pliable material of an end cap to prevent migration of the pins into the patient's body, thereby preventing the end of the pin from perforating the patient.

Therefore, given the teaching of Vanderslik, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Huebner, as taught by Vanderslik, to prevent migration of the pins into the patient's body, thereby preventing the end of the pin from perforating the patient.

With respect to claims 2-15, the above combination of references teaches all the limitations. Regarding the different shapes, as claimed by applicant. These particular configurations of the cover or end cap are nothing more than one of numerous configurations a person of ordinary skill would have found obvious for the purpose of providing a surface to the cover or end cap. See *in re Dailey*, 149 USPQ 47 (CCPA 1976). Regarding the package containing the end cap, carrying the end cap in a package is old and well known in the art; as best seen in the pertinent art cited.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,630,815	5-1997	Pohl et al.
5,527,309	6-1996	Shelton

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-


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4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene  
April 20, 2006

  
PEDRO PHILOGENE  
PRIMARY EXAMINER